



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0186; FRL-9924-57-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
District of Columbia; Preconstruction Requirements – Nonattainment New Source Review**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the District Department of the Environment (DDOE) for the District of Columbia (D.C.) on April 5, 2013. EPA is approving this revision to D.C.'s nonattainment New Source Review (NSR) program in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2014-0186. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection

during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of the Environment, Air Quality Division, 1200 1st Street NE., 5th floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814-2117, or by e-mail at talley.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 11, 2014 (79 FR 73508), EPA published a notice of proposed rulemaking (NPR) for the District of Columbia. In the NPR, EPA proposed approval of revisions to D.C.'s nonattainment NSR program, notably provisions for Plantwide Applicability Limits (PALs) and preconstruction permitting requirements for major sources of fine particulate matter (PM_{2.5}). The formal SIP revision was submitted by DDOE on April 5, 2013.

II. Summary of SIP Revision

Generally, the revision submitted by DDOE involves amendments to sections 199.1 (Definitions and Abbreviations) and 200 (General Permit Requirements), repealing and replacing section 204 (Permit Requirements for Sources Affecting Non-attainment Areas), repealing section 206 (Notice and Comment Prior to Permit Issuance), adding sections 208 (General and Non-attainment Areas) and 210 (Notice and Comment Prior to Permit Issuance), and adding specific definitions to section 299 (Definitions and Abbreviations). Additionally, several non-substantive, clarifying and organizational revisions to the sections mentioned herein were submitted. As described in detail in the NPR, the revisions incorporate provisions related to two

Federal rulemaking actions: the 2002 “Prevention of Significant Deterioration (PSD) and Nonattainment NSR (NSR): Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects” (2002 NSR Rules); and the 2008 “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})” (2008 NSR PM_{2.5} Rule). 67 FR 80186 (December 31, 2002)(2002 NSR Rules) and 73 FR 28321 (May 16, 2008)(2008 NSR Rule). The 2008 NSR PM_{2.5} Rule (as well as the 2007 “Final Clean Air Fine Particle Implementation Rule” (2007 PM_{2.5} Implementation Rule)¹), was the subject of litigation before the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Natural Resources Defense Council v. EPA*.² On January 4, 2013, the court remanded to EPA both the 2007 PM_{2.5} Implementation Rule and the 2008 NSR PM_{2.5} Rule. The court found that in both rules EPA erred in implementing the 1997 PM_{2.5} National Ambient Air Quality Standard (NAAQS) solely pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA (subpart 1), rather than pursuant to the additional implementation provisions specific to particulate matter in subpart 4 of part D of title I (subpart 4).³ As a result, the court remanded both rules and instructed EPA “to re-promulgate these rules pursuant to subpart 4 consistent with this opinion.”

As was noted in the NPR, with respect to PM_{2.5}, DDOE submitted an attainment plan for the Metropolitan Washington, DC-MD-VA nonattainment area on April 2, 2008. On January 12, 2009, EPA finalized a clean data determination for the area for the 1997 PM_{2.5}

¹ 72 FR 20586 (April 25, 2007).

² 706 F.3d 428 (D.C. Cir. 2013).

³ The D.C. Circuit’s opinion did not specifically address the point that implementation under subpart 4 requirements would still require consideration of subpart 1 requirements, to the extent that subpart 4 did not override subpart 1. EPA assumes that the court presumed that EPA would address this issue of potential overlap between subpart 1 and subpart 4 requirements in subsequent actions.

NAAQS, which suspended the requirement for DDOE to submit, among other things, an attainment plan SIP for the area. 74 FR 1146. Accordingly, on February 6, 2012, DDOE withdrew the attainment plan SIP, and it is no longer before EPA. Moreover, on October 6, 2014, EPA took final action to redesignate the Metro-Washington area to attainment for the 1997 PM_{2.5} NAAQS. 79 FR 60081. As a result, DDOE is no longer obligated to submit a nonattainment NSR SIP revision under section 189 of the CAA addressing nonattainment NSR permitting requirements for PM_{2.5}, including the requirements under subpart 4. Therefore, EPA has not evaluated the April 5, 2013 submittal for the purposes of determining compliance with the subpart 4 requirements. To the extent that any area is designated nonattainment for PM_{2.5} in the future in the Metropolitan Washington, D.C. area, DDOE will have to make a submission under Section 189 of the CAA addressing how its nonattainment permitting program in the D.C. SIP satisfies the CAA statutory requirements as to PM_{2.5}, including subpart 4 and any applicable PM_{2.5} Federal implementation rules.

Other specific requirements of DDOE's April 5, 2013 submittal and the rationale for EPA's approval are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving DDOE's April 5, 2013 submittal as a revision to the D.C. SIP.

IV. Incorporation by Reference

In this rulemaking action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of revisions to D.C.'s nonattainment NSR program, notably

provisions for PALs and preconstruction permitting requirements for major sources of PM_{2.5} as discussed in section II of this action. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S.

House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to D.C.’s nonattainment NSR program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 6, 2015.

William C. Early, Acting
Regional Administrator,
Region III.

Therefore, 40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart J—District of Columbia

2. In §52.470, the table in paragraph (c) is amended by:

- a. Revising the entries for sections 199, 200, 204, and 299.
- b. Removing the entry for section 206.
- c. Adding in numerical order entries for sections 208 and 210.

The revisions and additions read as follows:

§52.470 Identification of plan.

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(c) * * *

EPA-APPROVED REGULATIONS AND STATUTES IN THE DISTRICT OF COLUMBIA SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
District of Columbia Municipal Regulations (DCMR), Title 20 - Environment				
Chapter 1 General				
* * * *	* * * *	* * * *	* * * *	* * * *
Section 199	Definitions and Abbreviations	11/16/12	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>	
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Chapter 2 General and Non-attainment Area Permits				
Section 200	General Permit Requirements	11/16/12	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>	
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Section 204	Permit Requirements for Sources Affecting Non-attainment Areas	11/16/12	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>	Previous version of Section 204 is replaced in its entirety
Section 208	Plantwide Applicability Limit (PAL) Permits for Major Sources	11/16/12	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>	Added
Section 210	Notice and Comment Prior to Permit Issuance	11/16/12	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>	Added
Section 299	Definitions and Abbreviations	11/16/12	<u>[Insert the date of publication in the</u>	

			<u>Federal Register</u> <u>[Insert Federal Register Citation]</u>	
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